



Federal Communications Commission
Washington, D.C. 20554

June 23, 2014

DA 14-871

Mitchell Lazarus, Esq.
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1300 North 17th Street, 11th Floor
Washington, DC 22209

Re: Fixed Wireless Communications Coalition
Petition for Rulemaking, RM-11604

Dear Counsel:

By this letter, we dismiss without prejudice a petition filed by Fixed Wireless Communications Coalition ("FWCC") seeking to amend certain language in the rules governing the 3650–3700 MHz band ("3650 MHz band").¹

In March 2005, the Commission issued an order that adopted service rules authorizing nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band.² In response to petitions for reconsideration of the *2005 Order*, the Commission issued an order in June 2007 that generally affirmed the licensing scheme it had adopted for the 3650 MHz band.³ As of June 19, 2014, there were 2,598 active nationwide, non-exclusive licenses, and 45,184 locations were registered in the 3650 MHz band.

On April 15, 2010, FWCC filed a petition for rulemaking.⁴ The Petition for Rulemaking requested that the Commission amend the last two sentences in section 90.1319(d) of the Commission's rules, which articulate policies to prevent and resolve interference issues in the 3650 MHz band.⁵ According to FWCC, the language of these policies was framed in advisory rather than mandatory terms, which has created uncertainty for users of the band.⁶ FWCC stated that this advisory language may have been responsible for a decision by the Wireless Telecommunications Bureau ("Bureau"), which (according to FWCC) interpreted section 90.1319(d) in a way that "allows a newcomer to cause harmful

¹ Petition for Rulemaking of the Fixed Wireless Communications Coalition (filed April 15, 2010) (Petition for Rulemaking).

² See generally Wireless Operations in the 3650–3700 MHz Band, *Report and Order and Memorandum Opinion and Order*, ET Docket Nos. 04-151, 02-380, 98-237, WT Docket No. 05-96, 20 FCC Rcd 6502 (2005) ("*2005 Order*"). The service rules for the 3650 MHz band are located in Subpart Z of Part 90 of the Commission's rules (47 C.F.R. § 90.1301 *et seq.*).

³ See generally Wireless Operations in the 3650–3700 MHz Band, *Memorandum Opinion and Order*, ET Docket Nos. 04-151, 02-380, WT Docket No. 05-96, 22 FCC Rcd 10421 (2007). The 2007 Reconsideration Order clarified the meaning of "contention-based protocol" and modified the Commission's rules to restrict equipment using certain contention-based protocols to the lower part of the band, but otherwise denied the petitions for reconsideration. See generally *id.*

⁴ See generally Petition for Rulemaking.

⁵ See 47 CFR § 90.1319(d); see also Petition for Rulemaking at 6-7.

⁶ See Petition for Rulemaking at 6-7.

interference to an incumbent, and then demand that the incumbent make adjustments to alleviate the interference.”⁷ FWCC requested that the Commission amend this rule so as to make the policies concerning interference resolution mandatory for 3650 MHz band licensees.⁸

Five comments and one reply comment were filed in response to the petition.⁹ FWCC filed comments and reply comments in favor of its petition,¹⁰ four other commenters filed comments supporting it,¹¹ and one commenter did not oppose the proposed amendatory language if the Commission made clear the change had no substantive effect.¹²

Subsequent to the filing of FWCC’s petition, the Commission proposed to amend the rules governing the 3650 MHz band in a separate proceeding.¹³ Specifically, in April 2014, the Commission released a *Further Notice of Proposed Rulemaking* (“3.5 GHz FNPRM”) that sought comment on rules to govern the proposed Citizens Broadband Radio Service, which would be codified in a new Part 96 of the Commission’s rules.¹⁴ In addition to applying the new Part 96 rules to the 3550-3650 MHz band (“3.5 GHz band”), the 3.5 GHz FNPRM proposed to apply these rules to the 3650 MHz band.¹⁵ In view of the prospect that the Commission may extend the Part 96 rules to cover the 3650-3700 MHz band, we dismiss without prejudice FWCC’s petition.

Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i), 5(c), 301, 302, 303(c), 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 301, 302a, 303(c), 303(e), 303(f), and 303(r), and Sections 0.51(a), 0.51(c), 0.131, 0.241(e), 0.261(a)(1), 0.331 and 1.401(e) of the Commission’s Rules, 47 C.F.R. §§ 0.51(a), 0.51(c), 0.131, 0.241(e), 0.261(a)(1), 0.331 and 1.401(e), that the petition for rulemaking filed by the Fixed

⁷ *Id.* at 5. See World Data PR Inc., *Memorandum Opinion and Order*, 24 FCC Rcd 14648 (WTB BD 2009), *affirmed* 26 FCC Rcd 2360 (2011).

⁸ Petition for Rulemaking at 6-7.

⁹ Additionally, one party filed a letter in favor of the petition. See Letter from Ari Q. Fitzgerald, Esq. and Christopher J. Termini, Esq., counsel for Neptuno Networks to Marlene H. Dortch, Secretary, Federal Communications Commission (filed June 6, 2012).

¹⁰ Comments of the Fixed Wireless Communications Coalition (filed July 6, 2010); Reply Comments of the Fixed Wireless Communications Coalition (filed July 21, 2010).

¹¹ See Comments, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP Comments (“on behalf of its clients that are existing and prospective licensees in the 3.65-3.70 GHz band”) (filed July 6, 2010); Comments of Motorola, Inc. (filed July 6, 2010); Comments of the Wireless Internet Service Providers Association (filed July 6, 2010).

¹² See Comments of the Wireless Communications Association International, Inc. (WCAI) (filed July 6, 2010) at 4.

¹³ Compare Petition for Rulemaking with Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, *Further Notice of Proposed Rulemaking*, GN Docket No. 12-354, 29 FCC Rcd 4273, 4322-4324 ¶¶ 163-169 (2014) (“3.5 GHz FNPRM”).

¹⁴ See 3.5 GHz FNPRM, 29 FCC Rcd at 4322-4324.

¹⁵ See 3.5 GHz FNPRM, 29 FCC Rcd at 4280-4322 ¶¶ 17-162 (proposing and explaining rules to govern the 3.5 GHz band), 4322-4324 ¶¶ 163-169 (proposing to extend that regulatory regime to the 3650 MHz band) (released April 23, 2014). The proposal in the 3.5 GHz FNPRM—to extend the proposed 3.5 GHz band regulatory regime to the 3650 MHz band—was also contained in an earlier *Notice of Proposed Rulemaking* in the same proceeding. See Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, *Notice of Proposed Rulemaking and Order*, GN Docket No. 12-354, 27 FCC Rcd 15594, 15620-15622 ¶¶ 77-82 (2012).

Wireless Communications Coalition on April 15, 2010 IS DISMISSED WITHOUT PREJUDICE and RM-11604 IS TERMINATED, effective upon issuance of this letter.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau